

universal service. If CCL recovery is retained, the Commission will have to be vigilant to take whatever corrective action is necessary to prevent long distance rate deaveraging and reduced IXC incentives to serve rural area customers. If necessary, the Commission should consider using a universal service mechanism<sup>30</sup> such as Long Term Support<sup>31</sup> to ensure the accomplishment of the 1996 Act purposes.

Averaging interexchange rates — including any PICC costs the IXCs pass through to their end users — is now a statutory (as well as a regulatory) duty.<sup>32</sup> The Commission should recognize the need to prevent excessive access rate disparity as an important component of its enforcement of that mandate.<sup>33</sup>

1. SLCs Charged to Non-Price Cap LECs' Customers Should Not Exceed the Ceilings Applicable to Lines in Price Cap LEC Areas

As the D.C. Circuit held in NARUC v. FCC,<sup>34</sup> SLCs are simply flat interstate charges imposed at the Commission's direction on end users for the line that enables each customer to make and receive interstate calls. The comparability mandate has three corollaries when applied

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<sup>30</sup> The Associations refer, of course, to support from a federal universal service mechanism that fully satisfies the requirements of §254. We do not here restate the reasons for our belief that the Commission's proxy cost scheme is not likely to satisfy those requirements for rural LEC areas.

<sup>31</sup> The Long Term Support mechanism was originally adopted in 1987 as a means to mitigate the potential impetus to toll rate deaveraging from converting the common line pool to a voluntary pool. Report and Order, MTS and WATS Market Structure, 2 FCC Rcd 2953 (1987).

<sup>32</sup> 47 U.S.C. 254(g); Access Reform Order, para. 97.

<sup>33</sup> The Commission has not yet acted on the RTC's 1996 Petition for Reconsideration of its decision not to require interexchange carriers to make adequate information about their rates available to the public.

<sup>34</sup> National Ass'n of Reg. Util. Com'rs v. FCC, 737 F.2d 1095, 1115 (D.C. Cir. 1984).

to SLC charges:

First, the Commission has kept the SLC for primary residential lines and single line business lines in price cap LECs' largely urban serving areas at \$3.50. Thus, the "reasonably comparable" rural rate requirement prohibits SLCs for primary residential lines and single line business lines in ROR LECs' areas that are out of line with these capped levels. As Congress and the Commission are both well aware, higher SLCs are just like higher monthly local rates for consumers, and large businesses are the foremost beneficiaries of reductions in usage-based access charges and interstate rates.

Second, to the extent that the Commission adopts different SLCs for "non-primary residential" and "multi-line business" lines, as it did for price cap carriers and proposes for non-price cap LEC customers,<sup>35</sup> the higher residential and business SLCs for such lines must not exceed the nationwide average of the price cap LECs' SLCs for each such type of line. Each differential in rates that boosts rural rates above metropolitan rates for similar services and reduces rural customers' ability to receive advanced services is a step towards creating the detrimental information and telecommunications "have- not" status the Act seeks to prevent.

Third, the Commission's notion (para. 41) of raising the ceiling or even placing no ceiling on the SLCs that a non-price cap LEC charges its customers — in order to reduce the CCL charge to zero — would violate the §254(b)(3) comparability mandate, since the costs per line to be recovered by SLCs in non-price cap LEC service areas would exceed the average costs per

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<sup>35</sup> The Associations believe that a primary/non-primary line distinction for residential lines conflicts with §254 comparability, the §202-based principle that like services should not have different rates and the 1996 Act's intent to encourage advanced networks and services. See Section IV, infra.

line recovered by price cap LEC SLCs. Removing all SLC caps would obviously greatly aggravate the disparity and multiply the “have nots” in the highest cost areas.

2. IXC's Should Pay Flat-Rated PICC Charges, But Must Recover No More than the Price Cap LECs' Nationwide Average PICC Pass-Through Charges from Customers in Any Area They Serve

PICCs are also charges to recover interstate costs, but they are imposed on IXC's as flat rates designed to replace a portion of the usage-sensitive CCL charges formerly paid by IXC's for the origination and termination of interstate service. As noted earlier; changing to a flat charge is appropriate, since the charge recovers costs for the local loop, which does not change in cost based on the volume of calls. However, whether costs are more efficiently recovered in flat rates is a totally different issue than who should pay for the costs. Thus, although the Commission and the IXC's have the notion that all of the cost for having the shared local loop available for interstate services should fall on the customer that subscribes to the line, and the Commission even recently considered making LECs recover the PICC costs from end users, that is an overly simplistic view of “cost causation.” IXC's need access to the local loop to pick up and deliver the interstate calls their customers place, as the D.C. Circuit has recognized.<sup>36</sup> For example, it is IXC's — not telephone subscribers — that have spent millions of dollars in pursuing regulatory interventions to secure “equal access” to the local loop for themselves.<sup>37</sup> The access

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<sup>36</sup> Rural Telephone Coalition v. FCC, 838 F.2d 1307, 1313 (D.C. Cir. 1998).

<sup>37</sup> The demands for access to end users on terms and with interconnection quality satisfactory to the IXC's have imposed considerable costs on the public switched network, for improved IXC access. Customers were never given the opportunity to elect or decline to pay for this improved IXC access. Section 254(k) expressly requires cost allocations that “ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.”

arrangements they have demanded for connecting to their interexchange customers and various requirements concerning the numbers their customers call to reach a long distance provider, include the right to market to customers and participate on ballots seeking to become the "presubscribed" network to which a customer's outbound long distance calls are automatically routed (absent contrary instructions) and requirements for ILECs to make technological alterations to their local exchange networks and signaling systems to connect long distance callers to the IXC's network without dialing extra digits. These regulatory requirements help IXCs to vie for long distance customers in any market they choose to serve. In contrast, a customer that subscribes to a local line and pays a SLC or other flat-rated charge to initiate and receive interstate calls cannot obtain local access to his choice of any interexchange carrier or calling plan by reason of subscribing to that line. Sole control over whether the customer has access to a particular IXC -- that is, whether the IXC accepts and delivers calls to that local line or offers any particular calling plan in that area -- rests in the hands of the IXC. IXCs value that control and should pay the LEC for that value and other economic benefits derived from presubscription. Thus, PICCs are properly charged to interstate IXCs to recover a share of the loop costs involved in each ILEC's local origination and termination of calls placed on that IXC's network by its interstate customers.

The Commission expected the IXCS to reduce their usage-sensitive long distance rates to reflect the costs shifted out of the usage-sensitive carrier common line access charges they had been paying and into the new flat-rated PICCs. However, the IXCS have typically passed their

PICC charges along to their interstate customers as separate new flat-rated charges.<sup>38</sup> The mandates for geographic rate averaging and reasonably comparable rural and urban rates in Section 254 require the averaging of interexchange carriers' charges to their interstate customers regardless of whether the IXC recovers its access costs through usage-based long distance rates or a flat-rated pass through of PICCS to IXCs' end users. To comply with the plain language of the law and the intent of Congress, the Commission should not permit IXCs to pass the PICCs paid to a non-price cap ILEC through to the IXC's customers in that LEC's area at any level above the nationwide average of PICC pass-through charges recovered in areas served by price cap LECs. If the Commission requires LECs to impose different PICCs for "non-primary residential" and "multi-line business" lines (as it has for price cap carriers and proposes here), pass-through charges for those lines must also not exceed the nationwide average of the price cap LECs' charges for each type of line. Because PICC pass-throughs amount to an end user charge, the Commission should specify that averaging is required to enforce toll rate averaging and comparable rates.

3. The Commission Must Prevent the Higher NTS Costs in ROR Service Areas From Undermining the Mandates for Reasonably Comparable Rural and Urban Rates, Services and Access to Advancements and Geographical Toll Rate Averaging

The practical problem in ensuring IXC compliance with the §254 (b)(3) and (g) mandates is that the Commission has determined that IXC services are competitive and has greatly reduced its regulation of these carriers, including the amount of information that these carriers provide to

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<sup>38</sup> It is interesting that despite years of complaining about usage sensitive access charges that recover, in part, usage insensitive costs, the IXCs made no effort to spare end users this anomaly by revising their own usage-sensitive MTS rate structure. They have also passed through separate flat rated charges to interstate customers served by RoR carriers.

the Commission.<sup>39</sup> Recently, however, it has been criticized for its failure or inability to prevent or control PICC and universal service pass-through charges that Congress apparently had believed would be offset by reductions in long distance rates. Only if sufficient information is made available by IXC's, can customers or LECs in high cost rural areas detect violations of the mandates for reasonable rural and urban rate parity, geographic toll rate averaging and rate integration, and seek enforcement through the Commission's complaint process. Hence, the Commission must fashion its interstate cost recovery rules to ensure that customers are not charged deaveraged interstate rates, even if more interstate costs are recovered in ROR LEC areas by usage-sensitive long distance charges or flat-rated PICC pass-through charges.

The most practical way to induce the virtually deregulated IXC's to obey the dictates of §254 (b)(3) and (g) is to charge the national average of the price cap LEC's' PICCs and recover the remaining above- average access costs in the CCL or, if it becomes necessary, universal service support. It will be easier to ensure that the IXC's do not pass higher costs through to rural customers in this manner than by relying on monitoring the IXC's or by relying on customer complaints. Capping PICC charges to the IXC's at the national average will reduce their incentives and their ability to deaverage the pass-through charges or fail to reflect reductions in their CCL payments in end users' long distance rate reductions. PICC averaging would also avoid the concern that deaveraged PICCs — like high rural traffic sensitive access charges — would discourage competing interstate service providers from serving the higher cost non-price

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<sup>39</sup> Policies and Rules Concerning Interstate Interexchange Marketplace, CC Docket No. 96-61, Order on Reconsideration, 12 FCC Rcd 15102, 15015 at para. 4-5 (1996). The rules adopted in this proceeding have been stayed. MCI Telecommunications Corp. v. FCC, 96-1459 (D.C. Cir. Feb 13, 1997).

cap markets, contrary to the statutory principle of reasonably comparable rural and urban interexchange rates and services.

If the Commission instead lets the PICCs for higher cost rural areas exceed the PICCs in metropolitan markets, it will have to enforce IXC compliance with the interstate charge averaging requirements much more rigorously. High PICC ceilings in high cost ROR areas would increase the incentive for IXCs to deaverage their long distance rates or recover the PICCs they pay from their customers in higher flat-rated PICC pass-through charges for high cost rural areas served by non-price cap LECs. PICC pass-through disparities (like deaveraged toll rates) will, in turn, discourage economic development in rural areas, as businesses seek to minimize their telecommunications costs. The IXCs' incentives to deaverage are strong. Indeed, the Commission rejected IXC requests in the price cap access reform proceeding to forbear from the statutory rate averaging requirement with regard to PICC pass-through charges to recover deaveraged PICCs.<sup>40</sup> Deaveraging PICCs for areas where the disparities will be even greater, without taking responsibility to prevent deaveraging of end user charges, would fly in the face of the reasonable rate and service parity and access to up-to-date telecommunications resources Congress ordained for rural consumers.

The Commission should continue to allow LECs to charge IXCs for CCL costs in excess

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<sup>40</sup> Access Charge Reform Order at para. 97. The Commission said:

We find that establishing a broad exception to section 254(g) to permit IXCs to pass through flat-rated charges on a deaveraged basis may create a substantial risk that many subscribers in rural and high-cost areas may be charged significantly more than subscribers in other areas. Accordingly, we cannot conclude that enforcing our rate averaging requirement is unnecessary to ensure that charges are just and reasonable.

of the combined capped PICCs and SLCs, as indicated above. And the Commission's rules should (a) forbid IXCs from passing PICC charges through to customers in any form other than the reasonably comparable and geographically averaged interstate charges that the 1996 Act requires, (b) monitor the PICC and any other charges passed through to customers by IXCs to ensure that the requirements of §254(b)(3) and (g) are strictly followed and (c) provide an expedited complaint process and adequate access to information to ensure effective enforcement. If those precautions are insufficient to maintain averaging and interexchange competition in rural markets, the Commission must consider universal service recovery to satisfy the 1996 Act's requirements.

#### IV. SLCS AND PICCS SHOULD NOT VARY BETWEEN PRIMARY AND SECONDARY LINES

In the Access Charge Reform Order the Commission adjusted upward the SLC ceilings applicable to non-primary residential lines and multiline business lines for the purpose of increasing the proportion of common line revenue requirements recovered directly from end users.<sup>41</sup> The Commission created this differential in order to reduce the carrier common line charges to IXCs, while remaining consistent with the Universal Service Joint Board's recommendation that the SLC cap for primary residential lines remain at \$3.50 per month.<sup>42</sup> Recognizing that the concept of primary and secondary lines had no precedent in the historical practices of the industry, the Commission then opened CC Docket 97-181 to adopt definitions. Although the price cap carriers were required to implement the differential charges at the

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<sup>41</sup> Para. 71

<sup>42</sup> Access Charges Reform Order at para. 70.

beginning of 1998, the Commission has never concluded the proceeding or adopted definitions.

In its comments in CC Docket 97-181, the RTC pointed out the practical problems with implementing any such distinction in a manner that is administratively efficient, treats similarly situated subscribers equitably and does not involve intrusive inquiry into their living arrangements.<sup>43</sup> The Associations remain of the view expressed in those comments, and have grave concerns that any attempt to require regulated ILECs to create artificial distinctions between access lines will violate the competitive neutrality principle otherwise embraced by the Commission and the ban on discrimination in §202.

The Commission should also be concerned that significantly higher costs of ROR companies would produce such substantial discrepancies between primary and secondary line SLCs and PICCs that the use of second lines in rural areas would be negatively affected. For many rural companies, second lines are the only source of access line growth. Second lines are also necessary in many households as a practical matter to obtain Internet access and access to information resources is one of the foremost goals of the 1996 Act. The level of disparity would exacerbate the administrative difficulties of enforcing such an artificial distinction and lead to even more consumer confusion and resentment when interexchange carriers bill subscribers to recover the PICC. How can a LEC explain why a customer must pay more for a second LEC line than a primary line or additional lines acquired from a competitor? At the same time, the revenue potential, even on a pro forma basis, is not sufficient to offset a meaningful amount of the common line revenue requirement. On an actual experience basis, the result is more likely to

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<sup>43</sup> Comments of the Rural Telephone Coalition (RTC) in CC Docket No. 97-181 at pages 4-9. September 25, 1997.

be similar to the ill-fated "leaky PBX" charge. The consequence of these rural market realities is that whatever level of PICC and SLC is chosen, it should be the same for all residential lines.

V. ACCESS REFORM REQUIRES SUFFICIENT PRICING FLEXIBILITY TO RESPOND TO COMPETITION.

The NPRM acknowledges that, "in time," competition will come to the areas served by rate of return regulated LECs and seeks to revise access rates to encourage that development.<sup>44</sup> The Associations agree that members will face competition, albeit some sooner than others. In order for these rate-regulated LECs to have the opportunity to compete with the unregulated new entrants, while maintaining affordable end user rates without unnecessary pressures on universal service support, the Commission must begin now to provide significant pricing flexibility. In the absence of flexibility for rate of return LECs that need to respond to competitive pressure, their customers will migrate to competitors by reason of regulatory burdens and costs, not because of any greater CLEC efficiency or better service. It is, therefore, time for the Commission to begin a serious process to eliminate, at least, its rigid control of the rate structure of incumbent LECs.

The management of each LECs, not the Commission, is responsible to its owners and customers for the performance of the enterprise in the marketplace. Rate structure regulation of only one class of competitors necessarily involves the government in making the critical business judgments for that class, without any accountability to shareholders or customers for the results. The Commission's dual responsibilities to foster competition and preserve and advance universal service both obligate it not to bolster individual competitors by regulatory handicaps on the incumbents, but rather to use a combination of competition and the least necessary regulation

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<sup>44</sup> NPRM at para. 12  
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to benefit consumers. Where consumers not only are denied the benefits which might come from pricing flexibility, but also suffer the consequences of their provider's loss of universal service and local service revenues associated with lost customers the Commission can accomplish none of the three goals prescribed by Congress - - universal service, competition and deregulation.

VI. OTHER ACCESS RULE CHANGES SHOULD NOT INCREASE THE CARRIER COMMON LINE OR BILLING AND COLLECTION REVENUE REQUIREMENTS

A. The Common Line Revenue Requirement Should Not Increase

The NPRM proposes several other changes to the access charge rules which are generally intended more closely to match cost recovery with the nature of the costs involved. The principle proposed changes are reassignments of line-side port costs from local switching to common line<sup>45</sup> and incorporation of the residual Transport Interconnection Charge (TIC) in the common line pricing structure.<sup>46</sup> While the efficiency of matching cost recovery with the nature of the costs may be generally recognized, given the consensus that flat rate SLCs and PICCs must be capped, any increase in the common line revenue requirement will be recovered through a usage based charge. Increasing the common line revenue requirement will be inconsistent with the Commission's major objective of reducing the CCL charges of ROR carriers during the period that price cap LECs are phasing out their CCL charges. The additions would thus not achieve the Commission's stated objective and would be contrary to other statutory objectives such as geographically averaged interexchange rates. Similarly, the Commission's reasoning

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<sup>45</sup> NPRM at para. 54

<sup>46</sup> NPRM at 70

that “. . . it is important to eliminate the TIC” and “[t]herefore we propose to incorporate the residual TIC in the common line pricing structure just as we did for price cap LECs” is internally contradictory, given the recognition that the CCL will not go away any time soon for ROR LECs because ceilings must be maintained on SLCs and PICCs.<sup>47</sup> The contradiction is even greater if the cost of line side ports is added to the common line revenue requirement. Under price cap regulation, the TIC can be reduced by targeting PCI reductions, but there is no comparable mechanism under ROR regulation. Spreading the TIC proportionately over other access elements would merely disguise the issue, thus failing to resolve it, but distorting the prices of the other elements.

**B. The Commission Should Not Allocate General Support Facility Costs to Billing and Collection**

The NPRM tentatively concludes that §69.307 of the rules should be modified to allocate GSF costs related to billing and collection services to the Billing and Category, as the Commission did for price cap LECs.<sup>48</sup> While the general principle of allocating costs of non-regulated services to non-regulated accounts is sound, there are material issues and practical difficulties with immediate application to ROR LECs, which the price cap decision did not resolve. In that case, the Commission devoted considerable attention to the question of whether the amounts involved were significant. The eventual conclusion that the amounts were significant was based on analysis of the ARMIS data of those companies.<sup>49</sup> ARMIS data are not

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<sup>47</sup> NPRM, para. 70.

<sup>48</sup> NPRM, para. 82. See, Access Charge Reform, Third Report and Order, CC Docket No. 96-262, 12 FCC Rcd 22430 (1997) (GSF Order).

<sup>49</sup> GSF Order, 12 FCC Rcd 22436-37.

available for the ROR LECs, and the NPRM cites no other data to conclude that there is an actual, as opposed to theoretical need or benefit for this revision.

The Associations understand that a substantial number of ROR LECs use third party vendors rather than their own general purpose computers for billing and collection. [Although precise numbers are not available, the Associations estimate that forty percent of their member LECs use such vendors. Therefore, it is not clear that a significant amount of costs would be reallocated, in view to the total access bills paid by interexchange carriers.

Further, because unregulated billing and collection is performed under long term contracts, that are based on existing costs rules and cost information available at the time of contract. The LECs will find it difficult or impossible to recover any increased costs due to reallocation, unless and until the contracts are renegotiated. Therefore, the Commission should first determine whether the issue is of sufficient significance to warrant changing the present process. If so, it should establish a sufficient transition for the LECs to renegotiate their contracts.

## CONCLUSION

The Associations urge the Commission to implement reform in accordance with these comments.

Respectfully submitted

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## CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Rural Telecom Association and the National Telephone Cooperative Association in CC Docket No. 98-77; FCC 98-101 was served on this 17th day of August 1998, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

  
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